HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT APPEAL No.689 of 2007

Between:

Kalagara Anasuya

… Appellant

AND

The Govt., of A.P., rep., by its
Secretary to Government of Andhra Pradesh,
Tribal Welfare Department, A.P.,
Secretariat, Hyderabad and two others.

… Respondents

; JUDGMENT :

Counsel for the appellant : Shri Naram Nageswara Rao

Dated: 31st August, 2007

Per C.V.NAGARJUNA REDDY, J.

This appeal is filed against order dated 05.07.2007 passed by the learned Single Judge in Writ Petition No.2063 of 2003 whereby he declined to quash G.O.Ms.No.122, Social Welfare (L.R.T.I.) Department, dated 13.11.2002 issued by respondent No.1.

The facts to the extent, which they are relevant, are stated hereunder:

The appellant is a non-tribal. The Special Deputy Tahsildar (Tribal Welfare) filed a complaint under Section 3 (2) (a) and (b) of Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, as amended by Regulation No.1 of 1970 (for short "the Regulation") against the appellant to the effect that an extent of Ac.1-06 cents situated in Survey No.84/1-A of Lakshmudugudem village, Buttaiagudem Mandal, (for short "the subject land") which is admittedly an agency area is in her possession contrary to the Regulation. The same was registered as S.R.No.120/96, under Regulation 3 (1) of Regulation 1/59 read with Section 4 (1) of the Agency Tracts Interest and Land Transfer Act, 1917.

In response to the notice issued by respondent No.3, Sri Kalagara Venkat Rao, the husband of the appellant appeared before respondent No.3 on 27.09.1996 and his deposition was taken on record. After considering his statement and the material on record, respondent No.3 passed orders on 26.11.1996 whereby he held that the transfer of the subject land made in favour of the appellant is in

violation of Regulation 3 (1) (b) of the Regulations and directed the appellant's ejectment. Respondent No.3 noted that the husband of the appellant had given out that the subject land does not belong to their family and that they are in no way related to the said land. Respondent No.3 also mentioned that one Polnati Naganna was the registered patta holder of the subject land as evident from R.S.R. of the year 1993 and that the land was mutated by the Mandal Revenue Officer, Buttaigudem in his proceedings Roc.HA.522/92 dated 24.10.1992 by entering the name of the appellant in the revenue record in place of Polnti Naganna.

Feeling aggrieved by the order of respondent No.3, the appellant filed appeal, which was registered as S.R.A.No.2 of 1997 before the Agent to the Government (TW), West Godavari District, Eluru – respondent No.2, who by her order dated 10.09.2001 dismissed the appeal. Respondent No.2 in her order, while taking note of the statement of the husband of the appellant that the subject land does not belong to them, held that the appellant failed to file any documentary evidence, namely, the alleged possessory agreement dated 25.12.1968, on the basis of which she has set up the plea that the transfer has taken place prior to the coming into force of Regulation 1 of 1959 and that therefore there is no reason to interfere with the orders passed by respondent No.3. The appellant thereupon filed revision petition before the Secretary to Government of Andhra Pradesh, Tribal Welfare Department – respondent No.1 and the said petition was dismissed vide G.O.Ms.No.122, dated 13.11.2002.

Assailing the aforementioned three orders, the appellant filed Writ Petition No.2063 of 2003 and the learned Single Judge by his

order dated 05.07.2007 dismissed the same.

Heard Sri Naram Nageswara Rao, learned counsel for the appellant and carefully perused the record.

Learned counsel for the appellant submitted that on an earlier occasion, respondent No.3 initiated proceedings under the Regulations, that after holding enquiry he passed order on 29.05.1992 in S.R.No.168/81 holding that the appellant purchased the land in the year 1968 from a non-tribal and that since the said sale has taken place prior to the commencement of Regulation 1 of 1970 under which, for the first time, sale transactions between non-tribals was prohibited, there was no violation of the Regulations. On this premise, the learned counsel contended that it was not open to the respondents to reopen the issue once again and pass diametrically contrary orders.

We have given our serious thought to the contentions of the learned counsel for the appellant, but we have not felt convinced to accept the same.

A perusal of order dated 29.05.1992 passed by respondent No.3 on which the learned counsel for the appellant placed reliance shows that the said order was passed in respect of Ac.1-50 cents in R.S.No.83 of Laxmudugudem village. But in the instant case, the land in respect of which the impugned orders have been passed is situate in R.S.No.84/1-A of Laxmudugudem village admeasuring Ac.1-06 cents. Indeed, the Secretary to the Government in his order passed in G.O.Ms.No.122 dated 13.11.2002 specifically noted this contention raised on behalf of the appellant in point (iii) and negatived the same as under:

"With regard to the contention of the counsel for the

> petitioner at point (iii) above, it is evident as per records of the Lower Courts in S.R.No.168/81 and S.R.No.120/96 of the Special Deputy Collector (TW), K.R. Puram, they were dealt with different survey numbers and different extents of the land and they have no relevant with each other. Therefore, the Government see no reason to interfere with the orders of the Lower Courts in the matter."

Since the earlier order passed by respondent No.3 was in respect of a totally different land, the above noted contention of the learned counsel that initiation of the later proceedings amounts to re-opening of the case has no merit and hence the same is rejected.

From the material available on record, it is quite evident that the mutation of the subject land has taken place much after the commencement of Regulation 1 of 1959 as amended under Regulation 1 of 1970 and the appellant failed to file any document in support of her contention that the transfer of the subject land made in her favour is not in violation of the said Regulations. In the absence of such a material produced by the appellant, respondent No.3, rightly relied on Section 3(1)(b) of the Regulation 1 of 1959 which gives rise to the presumption that until contrary is proved, any immovable property situated in the agency tracts has been acquired by a person through a transfer made to him by member of a scheduled tribe. Therefore, we are of the considered opinion that the learned Single Judge while declining to interfere with the orders passed by respondent Nos.1 to 3 has not committed any error warranting interference in exercise of our Letters Patent jurisdiction.

For the aforementioned reasons, the Writ Appeal fails and is accordingly dismissed.

As a sequel to dismissal of the appeal, WAMP.No.1391 of 2007 filed by the appellant for interim relief is also dismissed.

C.V. NAGARJUNA REDDY, J

G.S.SINGHVI, CJ

Date: 31-08-2007.
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